99TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 99-471 Part 2

TELECOMMUNICATIONS TRADE ACT OF 1986

APRIL 15, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3131]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3131) to identify and reduce barriers to, and distortions of, international trade affecting United States suppliers of telecommunications equipment and services in interstate and foreign commerce, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

TITLE I—SHORT TITLE AND FINDINGS AND PURPOSES

SECTION 101. SHORT TITLE.

This Act, together with the following table of contents, may be cited as the "Telecommunications Trade Act of 1986":

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SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services will continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States, by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) unfair and discriminatory trade practices in foreign countries have resulted in, and continue to threaten, the loss of jobs in the United States telecommunications industry;

(5) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has resulted, and will continue to result, in a dramatic increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications; and

(6) unless this imbalance is corrected through the achievement of fully competitive market opportunities for United States telecommunications products and services in foreign markets, the United States should avoid granting continued open access to the telecommunications products and services, and other products and services, of such foreign countries in the United States market.

(b) PURPOSES.—The purposes of the Act are—

(1) to foster the economic and technological growth of and employment in the United States telecommunications industry and all United States persons who benefit from a high quality telecommunications network;

(2) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(3) to achieve a more open world trading system for telecommunications products and services through negotiation and achievement of fully competitive market opportunities for United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

TITLE II—ACTIONS TO ACHIEVE FULLY COMPETITIVE MARKET OPPORTUNITIES FOR UNITED STATES TELECOMMUNICATIONS PRODUCTS AND SERVICES.

SEC. 201. NEGOTIATING OBJECTIVES.

(a) PRIMARY OBJECTIVES.—The primary negotiating objectives of the United States under this Act regarding telecommunications products and services are to provide for—

(1) the nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services which are owned, regulated, or controlled by foreign governments;

(2) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network personnel;

(3) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(4) the ability to have telecommunications products which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(5) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers; and

(6) monitoring and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

(b) SECONDARY OBJECTIVES.—The secondary negotiating objectives of the United States under this Act regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, dumping, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services; and

(7) monitoring and dispute settlement mechanisms to facilitate compliance with telecommunications trade agreements.

SEC. 202. INVESTIGATIONS OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(a) REQUIRED INITIAL INVESTIGATIONS.—

(1) The United States Trade Representative (hereinafter in this Act referred to as the "Trade Representative"), in consultation with the Secretary of Commerce and the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872), shall undertake an investigation with respect to each foreign country for the purposes of—

(A) identifying and analyzing those acts, policies, and practices in the markets of that foreign country that deny fully competitive market opportunities to telecommunications products and services of United States firms; and

(B) establishing, on the basis of the analysis under subparagraph (A) and after taking into consideration—

(i) the needs of the affected United States industries,

(ii) the competitiveness of United States industries in domestic and world markets,

(iii) the progress being made to expand market opportunities under existing agreements or ongoing negotiations, and

(iv) the availability of appropriate incentives and effective remedies,

the specific primary and secondary negotiating objectives specified in section 201 that should be pursued in negotiations under section 203 in order to obtain fully competitive market opportunities in that foreign country for telecommunications products and services of United States firms.

(2) The Trade Representative may exclude any foreign country from the investigations required to be conducted under paragraph (1) if the Trade Repre-

sentative determines that the potential market in that country for United States telecommunications products and services is not substantial.

(3) The Trade Representative shall complete each investigation required to be undertaken under paragraph (1) by no later than the 180th day after the date of the enactment of this Act.

(b) OTHER INVESTIGATIONS.—If at any time after the investigations required under subsection (a) are completed, the Trade Representative—

(1) on his own motion, considers that there is reason to believe that any act, policy, or practice in the market of a foreign country is such as to deny fully competitive market opportunities to telecommunications products or services of United States firms; or

(2) accepts a petition filed by an interested party alleging that any act, policy, or practice described in paragraph (1) exists;

the Trade Representative may undertake an investigation with respect to the foreign country concerned for the purposes described in subparagraphs (A) and (B) of subsection (a)(1). An investigation undertaken under this subsection shall be completed within 180 days after the date on which the Trade Representative commences the investigation under paragraph (1) or the petition is filed under paragraph (2).

(c) REVIEW OF MARKETS OF COUNTRIES INITIALLY EXCLUDED FROM INVESTIGATION.—The Trade Representative shall—

(1) at least annually, review the potential market for United States telecommunications products and services in countries that were excluded from investigation under subsection (a) and with respect to which no investigation has been initiated under subsection (b); and

(2) if he considers any such country to have a market for United States telecommunications products and services which is substantial, undertake, and complete within 180 days, an investigation for the purposes described in subparagraphs (A) and (B) of subsection (a)(1) regarding that country.

(d) REPORT TO CONGRESS.—The Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the investigations undertaken under subsections (a), (b), and (c). Each report shall be submitted within 30 days after the investigation is completed.

SEC. 203. ACTION BY THE PRESIDENT IN RESPONSE TO INVESTIGATIONS BY TRADE REPRESENTATIVE.

(a) IN GENERAL.—After—

(1) all investigations required under section 202(a) are completed (and in no case later than the 180th day after the date of the enactment of this Act); and

(2) each investigation undertaken under section 202(b) or (c) is completed;

the President shall enter into negotiations with the foreign country or countries subject to investigation for the purpose of entering into bilateral or multilateral trade agreements, as appropriate, under section 301 which achieve the specific primary and secondary negotiating objectives that were established under section 202(a)(1)(B) with regard to such countries.

(b) ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.—

(1) If the President is unable during the negotiating period to enter into a trade agreement or agreements under section 301 with a foreign country which achieve the specific primary and secondary negotiating objectives established for that country under section 202(a)(1)(B), the President, after the close of the negotiating period—

(A) shall take whatever actions are authorized under paragraph (3) that are necessary and appropriate to achieve the purposes of the primary objectives not covered by agreement; and

(B) may take whatever actions are authorized under paragraph (3) that are necessary to achieve the secondary objectives not covered by agreement.

(2) in taking action under paragraph (1)(A) and (B), the President shall first take those actions which most directly affect trade in the telecommunications products and services with the country concerned.

(3) The President is authorized to take any of the following actions under paragraph (1)(A) and (B):

(A) Terminate, withdraw, or suspend any portion of any trade agreement entered into under—

(i) the Trade Act of 1974;

(ii) section 201 of the Trade Expansion Act of 1962; or

(iii) section 350 of the Tariff Act of 1930; with respect to any duty or import restriction imposed by the United States on any telecommunications product.

(B) Take any action described in section 301 of the Trade Act of 1974.

(C) Prohibit the Federal Government from purchasing specified telecommunications products.

(D) Increase domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of specified telecommunications products.

(E) Suspend any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products.

(F) Order the appropriate Federal officials to deny Federal funds or Federal credits for purchases of specified telecommunications products of any specified foreign country.

(G) Suspend, in whole or in part, benefits accorded articles from specified foreign countries under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(4) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (3)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States, the rate of such duty determined by the President up to the rate provided for in rate column number 2 of the Tariff Schedules of the United States shall apply to such products after the date on which such termination, withdrawal, or suspension takes effect.

(5) No action taken under paragraph (1) shall affect any binding obligations under any written contract entered into before the date of the enactment of this Act, to which any citizen or national of the United States is a party.

(6) Any action the President decides to take under subparagraph (3) of this subsection shall be treated as an action necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974.

(c) NEGOTIATING PERIOD.—

(1) For purposes of subsection (b), the term "negotiating period" means—

(A) with respect to a foreign country investigated under section 202(a), the 18-month period beginning on the date of the enactment of this Act; and

(B) with respect to a foreign country investigated under section 202(b) or (c), the 12-month period beginning on the date the investigation was completed.

(2) The negotiating period with respect to a foreign country may be extended by not more than two 12-month periods. An extension of the negotiating period shall take effect if (and only if)—

(A) the President, not less than 90 days before the negotiating period expires (or if extended previously, before the first extension period expires), submits to the House of Representatives and the Senate—

(i) a draft of a negotiating period extension bill, and

(ii) a statement that—

(I) substantial progress is being made in negotiations with the foreign country concerned, and

(II) further negotiations are necessary to reach an agreement which meets the specific primary and secondary negotiating objectives established under section 202(a)(1)(B) with regard to that country; and

(B) before the expiration of the negotiating period (or the first extension thereof), a negotiating period extension bill is enacted into law.

(3) For purposes of this subsection, the term "negotiating period extension bill" means a bill of either House of Congress the matter after the enacting clause of which is as follows: "That the Congress approves the extension for 12 months of the negotiating period with   that was requested by the President on ————————.", the first blank space being filled with the name of the foreign country concerned, and the second blank space being filled with the date on which the submissions to Congress under paragraph (2)(A) regarding the extension were made.

(4) On the day on which submissions to Congress under paragraph (2)(A) regarding an extension are made, the negotiating period extension bill submitted by the President shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of

the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. Such bills shall be referred by the Presiding Officer of the respective Houses to the Committee on Ways and Means and the Committee on Finance.

(5) Subsections (d) through (g) of section 151 of the Trade Act of 1974 apply to any agreement period extension bill. Any reference in such subsections to an implementing bill shall be treated as a reference to an negotiating period extension bill.

(d) MODIFICATION AND TERMINATION AUTHORITY.—The President may modify or terminate any action taken under subsection (b) if, any only if, the foreign country concerned enters into a trade agreement under section 301 which achieves the specific negotiating objective regarding which such action was taken.

(e) REPORT.—The President shall promptly inform the House Committee on Ways and Means and the Senate Committee on Finance of any action taken under subsection (b) or of the modification or termination of any such action under subsection (d).

SEC. 204. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) DEFINITION.—For purposes of this section, the term "trade agreement" means—

(1) a trade agreement entered into under section 301 that is in force with respect to the United States; and

(2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of the enactment of this Act.

(b) PERIODIC REVIEW.—

(1) The Trade Representative shall review each trade agreement to determine whether any product, policy, or practice of the foreign country—

(A) is not in compliance with the terms of the agreement; or

(B) otherwise denies, within the context of the terms of the trade agreement, to telecommunications products and services of United States firms fully competitive market opportunities in that foreign country.

(2) The Trade Representative shall carry out the reviews required under paragraph (1)—

(A) with respect to each trade agreement described in section (a)(1), within 6 months after the agreement enters into force with respect to the United States, and annually thereafter; and

(B) with respect to each trade agreement described in subsection (a)(2), within 18 months after the date of the enactment of this Act, and annually thereafter.

(c) REVIEW FACTORS.—

(1) In undertaking reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on its international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission is regard to the actual patterns of trade described in paragraph (1).

(d) ACTION IN RESPONSE TO AFFIRMATIVE DETERMINATION.—If the Trade Representative makes an affirmative determination under subsection (b) with respect to any act, policy, or practice of a foreign country, the Trade Representative shall take whatever action authorized under paragraph (e) that is necessary—

(1) to fully offset such act, policy, or practice; and

(2) to restore the balance of concessions in telecommunications products and services trade between the United States and such foreign country;

except that the Trade Representative may not take any action under subsection (e) on the basis of a review under subsection (b) regarding a trade agreement described in subsection (a)(2) before the President takes action under section 125(b)(3) with respect to any country.

(e) AUTHORIZED ACTIONS.—

(1) The Trade Representative is authorized to take the following actions under subsection (d):

(A) Terminate, withdraw, or suspend any portion of any trade agreement entered into under—

(i) the Trade Act of 1974,

(ii) section 201 the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930, with respect to any duty or import restriction imposed by the United States on any telecommunications product.

(B) Take any action under section 301 of the Trade Act of 1974.

(2) Actions described in paragraph (1) may be taken under subsection (d) with respect to other than telecommunications products and services only if—

(A) the Trade Representative has taken all feasible actions described in subparagraphs (A) and (B) of paragraph (1) with respect to telecommunications products and services; and

(B) the applicable objectives established in section 202(a)(1)(B) have not been achieved.

(3) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement is terminated, withdrawn, or suspended under paragraph (1)(A) with respect to any duty imposed by the United States on any product, the rate of such duty determined by the United States Trade Representative up to the rate provided for in rate column number 2 of the Tariff Schedules of the United States shall apply to such products after the date on which such termination, withdrawal, or suspension takes effect.

(4) Any action the Trade Representative decides to take under paragraph (1) shall be treated as necessary to implement a trade agreement for the purposes of section 151 and subsections (c), (d), (e), (f) and (g) of section 102 of the Trade Act of 1974.

(f) ACTIONS NOT TO AFFECT CERTAIN CONTRACTUAL OBLIGATIONS.—No action taken under this section shall affect any binding obligations under any written contract entered into before the date of the enactment of this Act, to which any citizen or national of the United States is a party.

(g) MODIFICATION AND TERMINATION AUTHORITY.—The Trade Representative may modify or terminate any action taken under subsection (e), if, and only if, he determines that the foreign country has taken appropriate remedial action regarding the act, policy, or practice concerned.

(h) REPORT.—The Trade Representative shall promptly inform the House Committee on Ways and Means and the Senate Committee on Finance of any actions taken under subsection (c) or of the modification or termination of any such actions under subsection (g).

SEC. 205. CONSULTATIONS.

(b) ADVICE FROM DEPARTMENTS AND AGENCIES.—For purposes of determining appropriate action under section 203(b) or 204(d), the President and the Trade Representative shall consult with the Secretary of Commerce and the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872).

(b) ADVICE FROM THE PRIVATE SECTOR.—The—

(1) Trade Representative, in conducting investigations and establishing negotiating objectives under section 202, and for purposes of determining appropriate action under section 204(d); and

(2) President, for purposes of determining appropriate action under section 203(b);

shall provide the opportunity for presentation of views by any interested party, including appropriate committees established under section 135 of the Trade Act of 1974.

(c) CONSULTATIONS WITH CONGRESS AND OFFICIAL ADVISORS.—For purposes of conducting negotiations under section 203(a), the President shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, currently informed with respect to—

(1) the negotiating priorities and objectives for each country involved;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in section 203.

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TITLE III—TRADE AGREEMENT AUTHORITY AND MISCELLANEOUS PROVISIONS

SEC. 301. GENERAL TRADE AGREEMENT AUTHORITY.

(a) IN GENERAL.—During the 42-month period beginning on the date of enactment of this Act, the President may enter into trade agreements, for purposes of achieving the primary and secondary negotiating objectives established under section 202(a)(1)(B), with foreign countries. The trade agreements may provide for—

(1) the harmonization, reduction, or elimination of—

(A) duties, or

(B) restrictions on, barriers to, or other distortions of international trade, or

(2) the prohibition of, or limitations on the imposition of—

(A) duties, or

(B) restrictions on, barriers to, or other distortions of international trade.

(b) AGREEMENT TREATED IN SAME MANNER AS AGREEMENT UNDER SECTION 102 OF THE TRADE ACT OF 1974.—

(1) For purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974, any trade agreement entered into under subsection (a) (other than a trade agreement provided for under paragraph (2)) shall be treated as a trade agreement entered into under section 102 of the Trade Act of 1974.

(2) The President may by proclamation implement any trade agreement entered into under subsection (a) that provides solely for unilateral concessions by a foreign country to the United States.

(c) APPLICATION OF AGREEMENT BENEFITS.—Notwithstanding any other provision of law, any agreement entered into under this section may provide that the benefits and obligations of such agreement—

(1) apply solely to the parties to the agreement, or

(2) not apply uniformly to all parties to such agreement.

SEC. 302. COMPENSATION AUTHORITY.

(a) IN GENERAL.—If—

(1) the President takes action under section 203(b); or

(2) the Trade Representative takes action under section 204(d); and

(3) such action is found to be inconsistent with the international obligations of the United States, including the obligations under the General Agreement on Tariffs and Trade;

the President may enter into trade agreements with the foreign country concerned for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

(b) AGREEMENT TREATED IN SAME MANNER AS AGREEMENT UNDER SECTION 102 OF THE TRADE ACT OF 1974.—For purposes of section 151 and subsections (c), (d), (e), (f), and (g) of section 102 of the Trade Act of 1974, any trade agreement entered into under subsection (a) shall be treated as a trade agreement entered into under section 102 of the Trade Act of 1974.

SEC. 303. DEFINITION OF TELECOMMUNICATIONS PRODUCT.

(a) For purposes of this Act, the term "telecommunications product" means any article that is classified under the following item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), as in effect on November 14, 1985:

684.57	684.66	685.24	685.32	685.41
684.58	684.67	685.25	685.34	707.90.
684.59	684.80	685.28	685.48	
684.65	685.16	685.30	688.17	

SEC. 304. INTERNATIONAL OBLIGATIONS.

Nothing in this Act may be construed to require the President and the United States Government to act in a manner inconsistent with the legal obligations of the United States, including the General Agreement on Tariffs and Trade.

BACKGROUND

Favorable action by the Ways and Means Committee on the Telecommunications Trade Act of 1986 reflects the Committee's concern over the tremendous imbalance in market access for telecommunications goods and services that exists between the United States and other countries. The increased deregulation of the U.S. market since the 1960s and before, capped by the court-ordered divestiture by American Telephone and Telegraph (AT&T) of its local operating companies on January 1, 1984, has resulted in a U.S. market virtually devoid of barriers to the entry of foreign competitors. This market openness is not viewed by the Committee as a negative feature of the U.S. market. The Committee has no intention, in reporting favorably on the bill, of suggesting that a more protected market should be reintroduced in the United States. Rather, it is the view of the Committee that vigorous efforts should be made by the United States to achieve more open markets in other countries. Such efforts should be undertaken with a sense of urgency and should not await the conclusion of any multilateral trade negotiations, which traditionally proceed at a relatively slow pace. The problems confronting the U.S. telecommunications industry, coupled with the importance of that industry to the United States economy, warrant more immediate attention.

The U.S. telecommunications industry is the largest in the world, accounting for nearly half of worldwide sales in 1985. The U.S. and world markets for telecommunications products and services have grown at very healthy rates in recent years and are projected to continue doing so in the coming years. Deregulation and technological advances are significant spurs to rapid growth in the industry.

According to a 1984 study by the U.S. International Trade Commission, the U.S. industry retains a strong technological lead over industries in other countries in most areas of the higher technology spectrum. U.S. competitiveness in such low-technology items as handsets has seen steady erosion due to a variety of factors, however, and imports of such products have enjoyed strong growth. At the same time, due to pervasive barriers in major foreign markets, U.S. producers have not been able to expand their exports as much as would have been the case in the absence of those barriers. Thus despite a strong technological lead in most product areas, the U.S. industry has seen a once-healthy trade surplus shift to a sizable deficit in a few short years and its share of the U.S. market decline gradually. The U.S. balance of trade in telecommunications equipment shifted from a surplus of about $800 million in 1981 to a deficit of $1.3 billion in 1985.

While the strong dollar has been a major factor in the overall loss of U.S. competitiveness in international trade, the problems confronting the U.S. telecommunications industry appear to go beyond that of dollar strength alone. Despite the competitive disadvantage of a strong dollar, U.S. producers have succeeded in increasing their exports steadily, if slowly, in recent years. U.S. exports of telecommunications equipment in 1981 were $1.9 billion; in 1985 they were nearly $2.5 billion. U.S. producers have continued competing successfully against their strongest competitors from Europe, Canada, and Japan in third country markets—particularly developing countries—even in the face of the strong dollar. The erosion in the U.S. trade balance in telecommunications equipment has stemmed from the sharp growth in imports—from $1.1 billion in 1981 to $3.7 billion in 1985.

In the area of telecommunications services, United States firms are among the world leaders in terms of competitive potential. However, in services trade as in product trade, foreign country restrictions on access to the basic telecommunications network, on the international flow of data, and other barriers severely hamper the ability of U.S. firms to compete internationally. With the world market in telecommunications services approaching an estimated $300 billion, removal of foreign barriers to trade is imperative.

The telecommunications industry, taken by itself, is of major importance to the maintenance of a vibrant, technologically advanced economy. From telephone switching apparatus and cellular telephones to optical fibers and communications satellites, the heart of a modern economy is bound closely to the telecommunications industry. When viewed more broadly, the central role of the telecommunications industry becomes even more apparent. Advancements in such industries as banking, data processing, tourism and travel, and a host of other industries would not be possible without ready access to a low-cost, highly efficient telecommunications network.

Yet the U.S. lead in telecommunications technology should not be taken for granted. Continued loss of market share in the United States, coupled with the inability of most U.S. firms to penetrate markets in Europe, Canada, and, until recently, Japan, carry the risk of steady erosion of that lead. For these reasons, the Committee believes that action is needed to address the problem of closed telecommunications markets in most of the world's advanced industrial countries. Such action should be taken at the earliest possible date. The open U.S. market would serve as the greatest possible leverage in negotiations to open foreign markets. The Telecommunications Trade Act, as amended, provides for judicious use of that leverage.

SUMMARY

H.R. 3131, as reported by the Committee with an amendment in the nature of a substitute, contains the following major provisions. The substitute, as reported, is very similar in substance to H.R. 3439, introduced by Congressmen Robert T. Matsui, Judd Gregg, and others.

Within six months after the date of enactment, the U.S. Trade Representative (USTR) is required to: (1) identify those foreign acts, policies, and practices denying fully competitive market opportunities to U.S. firms; and (2) establish specific negotiating objectives for each country identified, drawing from a list of primary and secondary negotiating objectives set forth in the bill. Investigations also may be prompted by petition or by self-initiation by the USTR.

Immediately thereafter, the President is required to begin negotiations with countries identified by the USTR as denying fully competitive market opportunities. The purpose of the negotiations is to enter into bilateral or multilateral agreements which achieve the primary and secondary objectives established by the USTR for each country. Such agreements must be reached within 18 months of the date of enactment. However, if substantial progress is being made, the President may request up to two one-year extensions of negotiating authority, subject to the "fast-track" Congressional review process set forth in sections 102 and 151 of the Trade Act of 1974 (an up-or-down vote within 90 days, with no amendments permitted).

If the President is unable to enter into a satisfactory agreement with a particular country within the authorized time period, the President is required to take whatever actions authorized in the bill that are necessary and appropriate to achieve the purposes of the primary objectives not covered by the agreement. The President, at his discretion, also may take whatever authorized actions are necessary to achieve the secondary objectives not covered by the agreement. The President is authorized to take a wide variety of actions under trade laws and other laws. Any actions taken must be directed first at telecommunications products and services from the country concerned. The same "fast-track" Congressional approval described above is required for any actions taken by the President against imports.

The USTR is required to conduct annual reviews of agreements reached by the President to determine whether any act, policy, or practice of the country concerned: (a) is not in compliance with the terms of the agreement; or (b) otherwise denies fully competitive market opportunities, within the context of the agreement, to U.S. firms. In making this determination, the USTR must "consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services."

If the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or deny fully competitive market opportunities under that agreement, he must take whatever authorized actions are necessary to: (a) fully offset the foreign acts, policies, and practices; and (b) restore the balance of concessions between the United States and the foreign country in telecommunications trade. No action may be taken against a country with an agreement in existence on the date of enactment before action has been taken by the President against any other country. The USTR is authorized to terminate, withdraw, or suspend trade agreements or take any action under section 301 of the Trade Act of 1974, except that action must be directed first at telecommunications products and services from the country concerned. "Fast-track" Congressional approval is required for any action taken by the USTR against imports.

Subject to the conditions described above regarding the authorized time period for negotiations, the bill extends to the President 42 months (three and one-half years) of general authority to enter into telecommunications trade agreement. "Fast-track" Congressional approval is required for all agreements except those involving unilateral concessions on the part of a foreign country. Agreements may be extended on a non-most favored nation basis and need not apply uniformly to all parties to an agreement.

The President is authorized to compensate any country for actions taken by the President or the USTR against its trade, if such actions is found to violate U.S. international obligations. Compensation agreements are subject to Congressional approval under "fast-track" procedures. The bill also specifies that nothing in the Act shall be construed to require the President and the Congress to violate U.S. legal obligations, including obligations under the General Agreement on Tariffs and Trade (GATT).

The Committee believes that the bill as amended is distinctly preferable to H.R. 3131 as reported from the Committee on Energy and Commerce. H.R. 3131 as reported by the other Committee has as its stated purpose "to identify and reduce barriers to, and distortions of international trade affecting" U.S. telecommunications goods and services. However, the Committee believes that the bill does not provide adequate or effective tools for reaching that goal. H.R. 3131 relies primarily on the licensing and certification authority of the Federal Communications Commission (FCC) to create an incentive for foreign countries to open their markets to U.S. telecommunications goods and services. If a foreign country fails to provide to U.S. firms "equivalent competitive opportunities" (i.e., as compared to those enjoyed by that country's firms in the U.S. telecommunications market) within seven months of the date of enactment, the bill sets in motion a process of mandatory retaliation by the President, under which he must direct the FCC to take certain enforcement actions within 8 months of enactment. The determination as to whether or not a foreign country denies equivalent competitive opportunities is made by the Secretary of Commerce in an investigation initiated upon enactment of the bill. While the President could avoid the need to direct the FCC to implement specified enforcement actions if he takes certain actions under Section 301 of the Trade Act of 1974, the substance of H.R. 3131 is focused heavily on such FCC actions. Moreover, while the President is encouraged in the bill to negotiate the reduction or elimination of foreign barriers, H.R. 3131 does not provide the President any negotiating authority with which to pursue such negotiations; and the seven-month timetable specified in the bill would make conclusion of successful negotiations very difficult in any case.

In addition to the provisions described above, H.R. 3131 specifies two areas in which mandatory FCC action is *required,* absent any investigations or Presidential determination. The first area would require the FCC to reconsider, with a view to revoking or suspending, any operating agreement between a U.S. provider of international satellite facilities and a foreign entity, if that operating agreement contains a foreign government procurement restriction. The second area would require the FCC to establish a "mirror certification" procedure—i.e., all telecommunications equipment imported into the United States from a foreign country would be subject to the same certification procedures [to ascertain compliance with FCC standards] as those imposed on U.S. equipment exported to that country.

The Committee does not believe that H.R. 3131 as reported from the Committee on Energy and Commerce offers sufficient flexibility or that it provides adequate or effective tools to achieve the goal of increased foreign market access. Moreover, the Committee does not believe that the FCC should play as central a role in U.S. trade policy as is envisioned by H.R. 3131 as reported from the Committee on Energy and Commerce. For these reasons, the Committee amended H.R. 3131 with the substitute bill described above.

COMMITTEE ACTION

H.R. 3131 was introduced on July 31, 1985, by Congressmen Timothy E. Wirth, James J. Florio, and others. The bill was referred to the Committee on Energy and Commerce, which reported it favorably with an amendment on February 6, 1986. H.R. 3131 was sequentially referred to the Committee on Ways and Means until April 15, 1986, where it was referred to the Subcommittee on Trade. H.R. 3439 was introduced on September 26, 1985, by Congressmen Robert T. Matsui, Judd Gregg, and others. The bill was referred jointly to the Committee on Ways and Means, where it was referred to the Subcommittee on Trade, and to the Committee on Energy and Commerce.

On March 11 and 13, 1986, the Subcommittee on Trade held hearings on the nature of the shifting competitive climate in the telecommunications industry; its impact on U.S. firms and on U.S. international trade flows; and on legislative proposals, including H.R. 3131 and H.R. 3439, to deal with the imbalance in international competitive opportunities.

The hearings addressed a broad spectrum of issues, including the impact of deregulation of the U.S. telecommunications market and the divestiture of AT&T on import penetration in the U.S. market; the nature of competition in foreign markets for telecommunications goods and services; and the likely trends in U.S. international competitiveness in telecommunications goods and services if the situation is not altered substantially. Witnesses were asked to comment specifically on H.R. 3131 and H.R. 3439.

The first day of hearings included testimony from Members of Congress, including the primary sponsors of the two bills. The Subcommittee also heard testimony from representatives of U.S. telecommunications firms, industry associations, and labor unions involved in the industry.

During the second day of hearings, the Subcommittee heard testimony from senior representatives of the U.S. Department of Commerce and the Office of the U.S. Trade Representative; and from representatives of major U.S. industry associations, foreign industry associations, and consumer organizations.

On March 19, 1986, the Subcommittee on Trade by voice vote ordered H.R. 3439 and H.R. 3131 favorably reported, with an identical amendment to each in the nature of a substitute, to the full Committee. The substitute bill is very similar in substance to H.R. 3439 as introduced.

On April 9, 1986, the Committee on Ways and Means considered H.R. 3131, as amended, in a markup session and ordered the bill favorably reported to the House with amendment by a recorded vote of 33 ayes and 2 nays.

On April 14, 1986, the Congressional Budget Office transmitted to the Committee a study of the economic effects of H.R. 3131, as amended, which was prepared at the request of the Subcommittee on Trade.

SECTION-BY-SECTION ANALYSIS AND JUSTIFICATION

Section 101. Short title

Section 101 provides that this Act may be cited as the "Telecommunications Trade Act of 1986."

Section 102. Findings and purposes

Section 102 sets forth six Congressional findings that rapid growth in the world market for telecommunications products and services will continue for several decades; the United States can improve prospects for its exports and technological leadership through a program to achieve an open world market; most foreign markets have extensive government intervention which adversely affects U.S. exports, investment, and employment; the open U.S. market has resulted in a dramatic growth in imports and a growing imbalance in competitive opportunities; and unless the imbalance is corrected by achieving fully competitive market opportunities for U.S. telecommunications products and services in foreign markets, the United States should avoid granting continued access to foreign products and services in telecommunications and other areas.

Section 102 also sets forth three purposes of the bill: (1) to foster the economic and technological growth of and employment in the U.S. telecommunications industry and all U.S. persons who benefit from a high quality telecommunications network; (2) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and (3) to achieve a more open world trading system for telecommunications products and services through negotiation and achievement of fully competitive market opportunities for U.S. telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

The Committee deleted the word "subsidiaries" wherever it appeared in the bill as reported by the Subcommittee on Trade, except in the "Purposes" section. In addition, a change was made to the language in section 204(c), relating to review factors that the USTR is to take into account in assessing a foreign country's compliance with a telecommunications trade agreement. In that section, the USTR now is directed to "consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services." Language within the parentheses previously referred to "sales of telecommunications products and services in a foreign country by United States firms".

The reason for making these changes was to clarify that a major purpose—and indeed, a major measure of success—of agreements negotiated under the bill is to eliminate barriers to U.S. exports. At the same time, the Committee recognizes that one element of foreign market openness is the related sales and services provided by U.S. subsidiaries, and any assessment of foreign market openness should take such activities into account.

The term "services" as used in the phrase "sales and services related to those products" exported from the United States is intended to cover not only installation, maintenance, and other ancillary services but also such services as value-added networks, which are a large and growing business for U.S. firms. The term "sales" as used in the phrase is intended to cover sales of products exported from the United States and any local modification, adaptation, and other manufacturing which is done to render a piece of equipment complete for use by the customer in a foreign country. The term "sales" is not intended to include equipment manufactured by a U.S. subsidiary in a third country and sold in the foreign country of immediate concern.

As noted above, in assessing a foreign country's compliance with an agreement, the review factors direct the USTR to consider "patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services". The role, U.S. subsidiaries in this assessment warrants further clarification. A country would not be considered as meeting the objectives of a telecommunications agreement simply by allowing U.S. subsidiaries to manufacture locally while at the same time maintaining barriers to competitive U.S. exports. However, if a product produced in the United States would not be competitive if exported to a foreign country, but that same product produced locally by a U.S. subsidiary in that country is competitive, the absence of U.S. exports of that product should not by itself be taken as an indication of a closed market. For example, the high cost of shipping entire reels of fiber optic cable in many cases renders the landed cost of such cable too high to compete effectively with cable produced locally in a foreign market. If a U.S. subsidiary is producing and competing successfully in a foreign market, and there are no significant barriers to U.S. exports, the USTR would not be required to declare that the foreign country is denying U.S. firms fully competitive market opportunities. Similarly, if a particular U.S. export *is* competitive, yet U.S. firms simply choose not to export to a foreign country for purely commercial reasons, and if there are no significant barriers to exports, the foreign country in question would not be an appropriate object of U.S. countermeasures.

Judgments as to the factors underlying the patterns of trade which flow from an agreement will have to be made on a country-by-country basis, relying heavily on consultations with private industry, the International Trade Commission, and other interested parties.

The Committee also agreed to delete all references in the bill as reported by the Subcommittee on Trade to the term "fair and equitable market opportunities" and replace it with the term "fully competitive market opportunities". The reason for making this change was to end the continued controversy over the use of the term "fair and equitable market opportunities" versus "substantially equivalent market opportunities" (as used in H.R. 3131 as introduced) and over the meaning of the two terms. Representatives of industry and labor all could agree that the overriding purpose of the bill is to open foreign markets, so that U.S. firms have the opportunity to compete fully and fairly with domestic firms in those markets. Such foreign market openness will provide increase opportunities for U.S. exports and for export-related employment in the telecommunications industry.

The Committee has no intention of suggesting that the standard of "fully competitive market opportunities" means that foreign telecommunications markets must be a mirror image of the U.S. market. This issue has been the source of intense controversy in discussions about the bill, and the Committee wishes to put such fears to rest. The bill contains no stated or implied requirement for the denationalization of telecommunications monopolies or for the elimination of vertical integration in foreign telecommunications markets. In the area of standards, while an overall standard of "harm to the network" may be adopted by a foreign country, the Committee does not expect all of that country's telecommunications standards (such as those relating to maintenance of the network, signal strength, etc.) to conform to those that exist in the United States. The same is true for other objectives set forth in the bill.

However, deregulation and divestiture of the telecommunications market in the United States has provided substantial benefit to foreign producers of telecommunications equipment. The Committee believes that U.S. producers should enjoy access to foreign markets which is comparable to foreign access in the U.S. market. The areas where such access is regarded as particularly important are spelled out in the bill's primary objectives—nondiscriminatory procurement, open and transparent standards-setting processes, nondiscriminatory access to the basic telecommunications network, and so on. In sum, achievement of the specific negotiating objectives established for a foreign country should have the effect of correcting the imbalance in competitive opportunities between the United States and that country in the area of telecommunications trade.

Section 201. Negotiating objectives

Section 201 sets forth six primary negotiating objectives and seven secondary negotiating objectives for the purpose of section 202, which requires the USTR to establish specific negotiating objectives on a country-by-country basis.

Taken as a whole, the primary negotiating objectives represent those minimum market conditions which should exist in a foreign country in order to give U.S. firms the opportunity to compete fully and fairly against domestic firms in that market. The primary negotiating objectives include the following items, as specified in section 201(a):

(1) The nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services that are owned, regulated, or controlled by foreign governments.

This objective is intended to clarify the coverage of this bill to include not only such state-owned telecommunications monopolies as exist in France and a number of other European countries, but also such entities as Nippon Telephone and Telegraph (NTT) in Japan, British Telecom (BT) in the United Kingdom, and Bell Canada. These governments maintain de facto control over, or direction of, the policies and practices of these telecommunications providers; and, in the case of Japan and the United Kingdom, currently hold large percentages of those firms' outstanding stock—100 percent in the case of Japan and 49.8 percent in the case of the United Kingdom.

This objective is not intended to cover truly private foreign firms which have entered their domestic markets in competition with such government-controlled entities as those listed above by way of example. This objective also is not intended to require the divestiture of state-owned monopolies or state-controlled entities such as those cited above. Rather, it is the desire of the Subcommittee to see that U.S. firms have an opportunity to supply equipment and such ancillary services as maintenance and repair on an equal footing with domestic producers of telecommunications equipment in foreign markets.

(2) assurances that any requirement for the registration of telecommunications products which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet standards established by the foreign country for preventing harm to the network or network personnel.

The purpose of this objective is to promote the common standard of "harm to the network" in assessing a product's accept-abililty for attachment to local telecommunications networks in foreign countries. The purpose also is to indicate that U.S. firms should be permitted to freely market customer premises equipment, if that equipment meets the requisite standards and is registered with the proper agency or authority in a foreign country. Many foreign countries impose needlessly complex standards, and impose restrictions on the marketing of certain equipment even if properly registered, which have the effect—intentional or not—of discouraging competition from foreign suppliers. West Germany, for example, considers the first telephone or modem purchased by the customer to be a part of the telecommunications network and not customer premises equipment. Private firms, therefore, cannot offer these "first-purchase" items for sale.

The Committee also believes that allowing manufacturers to "self-certify" that their equipment meets the requisite standards in each foreign market—as is the case in the United States with respect to telecommunications equipment, automobiles, and other products—would greatly facilitate international trade in telecommunications products.

(3) Transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products.

(4) The ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approval.

The Committee believes that these two objectives are important elements of a truly open market. The process of setting standards should be open to foreign, as well as domestic, firms, to ensure that standards are not crafted as an impediment to import competition. Foreign firms also should have ready access to the standards which apply to products and services to be sold in the local market. The ability to have telecommunications equipment approved and registered by type, as is done in the United States, would be vast improvement over the practice followed in many countries, whereby each piece of equipment sometimes must be approved and registered on an individual, piece-by-piece basis. Such procedures not only are cumbersome but act as a nontariff barrier as well.

The Committee also encourages, where appropriate, efforts by U.S. negotiators to seek the mutual recognition of type approval among parties to a telecommunications trade agreement which provides for type approval of equipment. Mutual recognition of type approval would be of particular significance in the case of a U.S. agreement with a bloc of countries, such the European Community (EC). Mutual recognition would allow a manufacturer obtaining type approval in one country to have the type approval accepted in another country. The concept does not require that participating countries' telecommunications networks have identical physical characteristics, although it would require harmonization of those countries' standards relating to "harm to the network". Because this one element of the bill's primary objectives is encouraged by the Committee, but is not required by the bill, failure to pursue or achieve mutual recognition of type approval would not be cause for mandatory countermeasures by the President.

(5) Access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers.

Value-added service is an area of very strong U.S. competitiveness and promises to be an area of very rapid world growth in the future. This objective is intended to assure that U.S. providers of value-added services (such as data processing, bank check-clearance, consumer credit-check services, etc.) can gain access to foreign countries' basic telecommunications networks on terms, conditions, and prices which are comparable to those enjoyed by domestic service providers.

(6) Monitoring and effective dispute settlements provisions regarding matters referred to in paragraphs (1) through (5).

This objective is regarded by the Committee as essential in assuring that any problems or disputes which may arise in the areas outlined above can be detected and resolved in a timely fashion.

Section 201(b) sets forth seven secondary negotiating objectives, which are:

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, dumping, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services; and

(7) monitoring and dispute settlement mechanisms to facilitate compliance with telecommunications trade agreements.

Section 202. Investigations of foreign telecommunications trade barriers

Investigations.—Section 202(a)(1)(A) requires the USTR, within six months of the date of enactment, to undertake and complete an investigation of foreign countries with a substantial potential market for U.S. telecommunications products and services. The purpose of the investigation is to identify and analyze those acts, policies, and practices in each country which deny fully competitive foreign market opportunities to the telecommunications products and services of U.S. firms. It is the Committee's intention that the USTR identify and analyze a list of priority problems in each country which have the overall effect of denying fully competitive foreign market opportunities. The language in this section should not be construed as requiring the USTR to develop a comprehensive "laundry list" of problems in each country including items of low priority or with very limited impact on foreign market access. The list developed here should provide the basis for establishing a priority list of negotiating objectives under this section.

Under section 202(a)(2), the USTR may exclude any foreign country from the required investigations, if the USTR determines that the potential market in that country for U.S. telecommunications products and services is not substantial. However, countries excluded from investigation for this reason must be reviewed annually by the USTR as provided by section 202(c). If the USTR considers that country's potential market to be substantial, he must undertake and complete, within 6 months, an investigation to identify and analyze those acts, policies, and practices which deny fully competitive foreign market opportunities for U.S. firms.

Investigations by petition from interested parties or by self-initiation also may be undertaken by the USTR under section 202(b). Such investigations must be completed within 6 months of the date on which they were commenced, in the case of investigations by self-initiation; or within 6 months of the date on which a petition is filed. It is the Committee's intention that investigations which are self-initiated by the USTR or initiated by petition apply only to those acts, policies, or practices which deny fully competitive market access, as is required for investigations mandated by the bill. The USTR should not undertake an investigation on the basis of frivolous or unimportant assertions by a petitioner which allege or identify acts, policies, or practices with a very limited impact on foreign market access.

The USTR is required to report to the House Committee on Ways and Means and the Senate Committee on Finance on the investigations undertaken under this section. Each report must be submitted within 30 days of the completion of the investigation.

Trade Negotiating Objectives.—Section 202(a)(1)(B) requires the USTR to establish specific primary and secondary negotiating objectives, drawing from the list of such objectives set forth in section 201, which should be pursued in negotiations to obtain fully competitive market opportunities in foreign countries for telecommunications products and services of U.S. firms. The USTR shall establish these negotiating objectives on the basis of the analysis described above. The USTR also shall take into consideration: the needs of the affected U.S. industry in that country; the competitiveness of U.S. industries in domestic and world markets; the progress being made to expand market opportunities under existing agreements or ongoing negotiations; and the availability of appropriate incentives and effective remedies.

The six primary negotiating objectives are immediate objectives which should be sought in each bilateral negotiation, based on the USTR's judgment, in close consultation with the affected industry, of the situation in that country and the needs of U.S. industry in that country—i.e., which barriers are the most significant impediments to obtaining fully competitive market access—and how much negotiating leverage the USTR feels is available to aid in achieving those objectives. Such leverage could take the form of U.S. countermeasures or incentives in the form of additional U.S. concessions. It is the view of the Committee that few, if any, additional trade concessions should be made to other countries as part of agreements reached through negotiations. The U.S. market for telecommunications equipment and services is virtually completely open to foreign competition. Continued access to the U.S. market should serve as sufficient incentive to foreign countries to open their telecommunications markets to U.S. firms.

The seven secondary negotiating objectives also represent important goals for negotiation. However, unlike the primary objectives, the secondary objectives represent those longer-term goals which are envisioned for international trade in telecommunications in order to bring such trade more fully into the GATT system. As a result, while the Committee encourages the USTR to seek to obtain these objectives in negotiations with other countries, failure to achieve these secondary objectives does not require the same degree of response by the President under section 203, as does failure to achieve the primary objectives.

In establishing the specific primary and secondary negotiating objectives for each country, the USTR is required to consult with the private sector and any interested parties. The USTR also should keep the House Committee on Ways and Means and the Senate Committee on Finance informed of developments in this area. However, it is not the intent of this bill that the USTR should make its list of negotiating objectives available beyond the private sector advisory committees established under section 135 of the Trade Act of 1974; the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; the Congress; or other interested parties, such that the foreign country concerned is aware in advance of the U.S. "bottom-line" negotiating objectives with respect to that country. To do so would minimize the possibility of obtaining additional concessions from that country.

Section 203. Action by the President in response to investigations by Trade Representative

Section 2039(a) requires the President, upon completion of the USTR's investigations under sections 202(a)(1)(A) [mandated by the bill] or 202(b) [by petition or self-initiation] to enter into negotiations with countries which were identified during the investigation as denying fully competitive market opportunities. The purpose of the negotiations is to enter into bilateral or multilateral agreements which achieve the specific primary and secondary negotiating objectives that were established by the USTR under section 202(a)(1)(B).

The negotiating period set forth in section 203(c) provides 18 months from the date of enactment for the President to enter into agreements with countries identified by the USTR during his investigation. If the USTR's investigations take a full six months, the President would have up to 12 months to reach agreement; more negotiating time would be available if the USTR's investigations took less than six months. In the case of negotiations following investigations by petition of self-initiation, the negotiating period would be 12 months.

The Committee agreed to authorize the President to request up to two one-year extensions of the negotiating period. To do so, he must submit a bill 90 days prior to the expiration of the negotiating period and a statement that: substantial progress is being made in negotiations with the country concerned; and further negotiations are necessary to reach the agreement which meets the specific primary and secondary negotiating objectives established with respect to that country. Such requests will be considered by Congress under "fast-track" procedures. If Congress does not approve a request for an extended negotiating period, and a satisfactory agreement has not been reached, then appropriate remedies would have to be put into effect against the country concerned. Since such remedies also require approval of Congress under "fast-track" procedures, the President would have to submit a package of possible trade actions at the same time that he submits the request for extension of the negotiating period.

The provision authorizing a one year period of initial negotiations following the six month investigation period, and two possible extensions of one year each in these negotiations, is markedly different from the provisions of H.R. 3439 as introduced. That bill calls for two years of negotiation with no possibility of extension. This compromise change was agreed to in response to concerns raised by a number of witnesses during the hearings held by the Subcommittee on Trade. It enables the Congress to maintain strong oversight over the negotiations but removes the inflexibility of a fixed deadline for either reaching agreement or imposing trade remedies.

If the President is unable to enter into a trade agreement with a foreign country within 18 months after the date of enactment (or longer, as approved by Congress), section 203(b)(1)(A) provides that the President shall take whatever actions authorized by the bill that are necessary and appropriate to achieve the purposes of the primary objectives not covered by the agreement. Section 203(b)(1)(B) provides that the President may take whatever actions authorized by the bill that are necessary to achieve the secondary objectives not covered by the agreement.

The overall purpose of the primary objectives is to achieve fully competitive market opportunities for U.S. firms in foreign markets. A determination as to whether or not fully competitive market opportunities have been achieved in an agreement, and thus whether action is necessary, will be a judgment made by the President in close consultation with parties specified in section 205 of the bill—the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; and any interested parties from the private sector, including appropriate committees established under section 135 of the Trade Act of 1974. These private sector advisory committees include representatives of industry and labor.

It is not the Committee's intention that each primary objective must be met in full in order for a judgment to be made that an agreement achieves fully competitive market opportunities in a foreign country. Rather, it is the Committee's intention that the agreement, taken as a whole, is sufficient to achieve that objective. The consultation process between the President and those firms that are seeking access to the foreign market in question, coupled with the requirement that the Congress approve any agreement requiring U.S. concessions, should serve as an adequate safeguard against the possibility that the administration would accept under this standard a patently inadequate agreement.

The reason for giving the President discretion as to whether or not to take action when the agreement does not achieve the secondary negotiating objectives is two-fold. First, because the secondary objectives constitute goals of a longer-term, more multilateral nature than do the primary objectives, it is felt that the President should not have to take action against a country if those objectives are not met in a bilateral context. Moreover, some of the acts, policies, and practices referred to in the list of secondary objectives—such as subsidization, dumping, or the violation of intellectual rights—can be remedied by other U.S. trade laws. Second, the Committee wants to avoid creating a disincentive to the USTR's selecting more negotiating objectives than those set forth in the list of primary objectives. This might be the case if the President were required to take action in the event that the secondary objectives were not met.

In determining what actions to take against a country, the President should take into account the nature and extent of the market to which fully competitive access is being denied; the ability of U.S. firms to supply that market; and the potential effectiveness of measures available to correct the imbalance in competitive opportunities. If the segment of the foreign market for which fair and equitable access has not been achieved is a segment in which U.S. firms are not as competitive as firms in third countries; or if the President lacks any viable means of inducing the foreign country to open that market segment; then it would not necessarily be desirable to take action against the country concerned, or to offer additional U.S. concessions, when the benefits of market opening might flow to firms in other countries.

Section 203(b)(2) requires that any actions taken by the President against the goods or services of a foreign country be directed first at telecommunications products and services from that country. Only then can the President take action directed at other products and services. The purpose for this requirement is to exert the maximum possible pressure against foreign suppliers of telecommunications products and services who are the chief beneficiaries of the open U.S. market and the protected home market.

Section 203(b)(3) authorizes the President to terminate, withdraw, or suspend trade agreements; take any action under section 301 of the Trade Act of 1974; prohibit the Federal Government from purchasing telecommunications products of a specified country; increase domestic preferences or suspend waivers of domestic preferences with respect to Federal government telecommunications purchases (or other products in the case of suspension of waivers); deny Federal funds or credits for purchases of telecommunications products of a specified foreign country; and suspend GSP benefits on articles from specified foreign countries.

With respect to the authority to terminate, withdraw, or suspend trade agreements, the President is authorized to increase the rate of duty on products of the country concerned up to the rates set forth in column 2 of the Tariff Schedules of the United States (TSUS). Those rates are to apply to products imported immediately after the termination, withdrawal, or suspension of an agreement takes effect.

The President is authorized to select from a broad range of measures in order to increase his ability to tailor any actions to the telecommunications trade situation characterizing each country. The

President may use the flexibility provided by the options to impose those measures that will have the most profound effect on the foreign country concerned, to moderate the cost of compensation, or to avoid or lessen the impact on domestic users of imports from that country. In his consultations with interested parties from the private sector, including representatives of industry and labor, the President should, among other things, consider any information received as to the effects of proposed actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products. Based on such information, and to the extent consistent with the objectives of the bill, the President should attempt to minimize any adverse effects of U.S. actions on such parties and may be selective as to the products covered by any actions. Such consideration is important in order to avoid causing harm to U.S. interests which may be greater than the benefits to be obtained by selecting a particular product for action. This flexibility does not, however, alter the requirement that the President's actions be of sufficient magnitude to achieve the purposes of the primary and, as appropriate, the secondary objectives established with respect to that country.

Any action taken by the President under section 203(b)(3) is subject to approval by Congress under the "fast-track" procedures of sections 102 and 151 of the Trade Act of 1974.

The President may modify or terminate any action taken against a country only if that country enters into a trade agreement which achieves the objectives established by the USTR for that country. The President shall inform the House Committee on Ways and Means and the Senate Committee on Finance promptly of any such modification or termination.

In order to ensure the sanctity of contracts, actions taken by the President under section 203(b)(3) will not affect any binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party.

Section 204. Review of trade agreement implementation by Trade Representative

Section 204(a) defines "trade agreement" as (1) a trade agreement entered into under section 203 that is in force with respect to the United States, and (2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of enactment of this Act. The only country that currently falls into the second category is Japan. It is the intent of this section that the USTR's review and enforcement authorities apply not to agreements involving U.S. concessions and approval by the Congress, but also to agreements which involve only unilateral concessions on the part of a foreign country.

Section 204(b) requires the USTR to conduct annual reviews to determine whether any act, policy, or practice of a country with which a telecommunications trade agreement has been reached: (a) is not in compliance with the terms of the agreement; or (b) otherwise denies fully competitive market opportunities within the context of the terms of the agreement. In his review, the USTR is directed under section 204(c) to:

consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

The USTR must consult with the International Trade Commission with regard to "actual patterns of trade."

If the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or otherwise deny fully competitive market opportunities under the agreement, section 204(d) requires his to take whatever authorized actions that are necessary to: (a) fully offset the foreign act, policy, or practice, and (b) restore the balance of concessions between the United States and the foreign country in telecommunications trade. The USTR may not take action against a country with a trade agreement in existence on the date of enactment before the President has taken action against any other country under section 203(b)(3).

Section 204(e) authorizes the USTR to terminate, withdraw, or suspend trade agreements or take any action under section 301 of the Trade Act of 1974. Actions must be directed first at telecommunications products and services. If all feasible actions have been taken against telecommunications products and services, and if the applicable objectives established with respect to that country have not been achieved, then, and only then, may actions be directed against other products and services. As with Presidential action under section 203(b)(3), the purpose of this limitation is to focus U.S. actions first and foremost on the products and services of those foreign producers who benefit most from the open U.S. telecommunicatons market and the protected home market.

It is the intent of this section that the USTR attempt to tailor any actions to the telecommunications trade situation characterizing each country, for the reasons outlined with respect to actions taken by the President. Similarly, the USTR should, among other things, attempt to minimize any adverse effects of his actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products, as provided for with respect to the President's actions. However, action by the USTR nonetheless must be sufficient to fully offset the act, policy, or telecommunications trade between the United States and the country concerned.

Nothing in this bill should be construed to require that actions by the President or the USTR be directed against U.S.-based subsidiaries of foreign firms.

Actions taken by the USTR will not affect binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party. The USTR may modify or terminate any action taken under this section only if he determines that the foreign country concerned has taken appropriate remedial action regarding the act, policy, or practice concerned. The USTR shall promptly inform the House Committee on Ways and Means and the Senate Committee on Finance of any such modification or termination.

The overall purpose of section 204 is to establish a mechanism to enforce trade agreements involving telecommunications products and services. In monitoring foreign countries' compliance with agreements, the USTR is required to consider not only compliance with the letter of the agreements but also of the spirit, which is to open foreign markets and expand the opportunities for world trade. It is for this reason that the USTR is directed to consider the "actual patterns of trade" which emerge between the United States and a foreign country following conclusion of an agreement, taking into account the international competitive position and export potential of the relevant U.S. products and services. This provision is intended to discourage foreign countries from frustrating the overall objective of fully competitive market opportunities through measures or actions which do not necessarily violate the terms of the agreements as written but which do not permit U.S. firms to enjoy the rewards of a truly open market.

Section 205. Consultations

Section 205 requires that the President and the USTR consult with the Secretary of Commerce and other members of the Trade Policy Committee; with the private sector advisory committees established under section 135 of the Trade Act of 1974 (which includes representatives of labor and industry); and with other interested parties in the course of investigations, in the establishment of negotiating objectives, and in determining appropriate action. In addition, this section requires the President to consult closely with appropriate committees of Congress on all aspects of the negotiations.

Section 301. General trade agreement authority

Section 301 provides the general trade agreement authority which is necessary to allow the President to conclude telecommunications trade agreements under section 203(a). It is not to be read as providing separate telecommunications negotiating authority which is free of the requirements of other provisions of the bill. The trade agreement authority provided for in section 301 is subject to all the conditions and limitations set forth in section 203(c), relating to the negotiating period available for reaching telecommunications trade agreements.

Section 301(a) authorizes the President, during the 42-month period following the date of enactment, to enter into trade agreements to achieve the primary and secondary objectives established by the USTR. Section 301(b) provides that agreements involving U.S. concessions are to be treated as trade agreements subject to "fast-track" legislative procedures. The President is authorized to implement through proclamation any trade agreement that provides solely for unilateral concessions by a foreign country to the United States. Under section 301(c), the President is authorized to extend agreement benefits and obligations to all countries or just to countries which are parties to the agreement. In addition, the President may choose whether or not to apply the agreement benefits and obligations uniformly to all parties.

Section 302. Compensation authority

Section 302(a) authorizes the President to enter into agreements granting new U.S concessions as compensation to a foreign country for action taken against it, if that action is found a violate U.S. international obligations, including obligations under the General Agreement on Tariffs and Trade (GATT). Agreements reached under this section are subject to Congressional approval under "fast-track" procedures. Section 302(a)(3) is addressed primarily at those cases in which U.S. action is taken to restore the balance of concessions in the face of a telecommunications trade agreement violation by a foreign country. Unless the U.S. action is found to be a violation of U.S. GATT obligations, it would not seem desirable or appropriate to compensate that foreign country for such action.

It is not the intent of this section to require that the President await a decision by the GATT or a GATT panel in all cases before determining whether or not compensation should be awarded to a foreign country. Adequate GATT case law not exists to provide guidance in many cases as to whether or not a U.S. action violates U.S. GATT obligations. In such cases, as soon as U.S. action is taken, the President, may submit to the Congress a bill containing the proposed U.S. concessions to be offered as compensation.

In cases for which GATT rules are unclear or for which no GATT case law exists and there is genuine uncertainty as to whether or not U.S actions violate U.S GATT obligations, the President should allow the foreign country concerned to pursue its rights under the GATT and should avoid granting new U.S. concessions until a GATT ruling has been made.

Section 303. Definition of telecommunications product

Section 303 defines "telecommunications product" in terms of classification numbers from the Tariff Schedules of the United States (TSUS).

Section 304. International obligations

This section provides that nothing in the Act shall be construed to require the President and the Congress to violate U.S. legal obligations, including GATT obligations.

VOTE OF THE COMMITTEE IN REPORTING OF THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rule of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill: H.R. 3131 was ordered favorably reported by the Committee on Ways and Means with an amendment in the nature of a substitute by a vote of 33 ayes and 2 nays.

OVERSIGHT FINDINGS

In compliance with clause 2(b)(1) of rule X and clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes, on the basis of hearings by the Subcommittee on Trade, discussions among Members, and review of recent developments in international trade and competitive opportunities in telecommunications products and services, that additional legislation is necessary to achieve a more open world trading system for telecommunications products and services and to foster the economic and technological growth of, and employment in, the United States telecommunications industry.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3131, as reported, does not provide new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and with clause (2)(l)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee states that it agrees with the information furnished by the Congressional Budget Office on H.R. 3131 as reported, which is provided below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 14, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3131, the Telecommunications Trade Act of 1986, as ordered reported by the House Committee on Ways and Means, April 9, 1986.

The bill would require the United States Trade Representative (USTR) to investigate and report to the Congress on foreign barriers to competitive opportunities for U.S. firms in telecommunications markets. Once the investigation is completed, within six months after enactment of the bill, the President would have until 18 months following enactment to negotiate trade agreements that meet the USTR's objective for fair markets for telecommunications products and services. The bill also authorized the President to request two one-year extensions of this negotiating period. If no agreements are obtained, the President would be required to implement retaliatory trade actions authorized by the bill. Further Congressional action, however, would be required for any actions the President takes against imports. The USTR would also be authorized to take actions to restore the balance of concessions between the United States and a foreign country.

To the extent that the response of the President or the USTR would affect dutiable imports of telecommunications products, it could cause an increase or decrease in customs duties collections. Because it is uncertain what measures would be taken, CBO is unable at this time to estimate the revenue effect of this bill. We do not expect the other activities required by the bill to result in significant additional costs to the federal government.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3131 would have a negligible inflationary impact on prices and costs in the operation of the general economy, based on analyses provided to the Committee by the Congressional Budget Office.

DISSENTING VIEWS BY HON. BILL FRENZEL AND HON. WILLIS D. GRADISON

This bill marks the beginning of consideration of trade reform legislation for this Congress and, in our view, does not represent an auspicious start.

Once again we are returning to sectoral reciprocity, so often rejected by the past several Administrations and ultimately the Congress, in order to correct problems of international trade that cut across product categories as well as national boundaries. The bill ignores macroeconomic forces, although crucial to solving the trade deficit, and attempts to adjust trade patterns through an unrealistic quid pro quo solely in the telecommunications sector.

H.R. 3131 ostensibly is a response to trade problems created by the divestiture of AT&T, long viewed as having monopoly control over telecommunications in this country. With divestiture, a wide range of companies, including foreign competitors in Japan, the European Community (EEC) and elsewhere, are able to seek a share of the U.S. telecommunications market to the benefit of consumers who now have a variety of suppliers and prices from which to choose. Compared with our newly opened market in this sector, our trading partners lag behind and have not provided "equal opportunity" for U.S. telecommunications sales abroad. The bill describes the recent turn of events as unfair to the U.S. and establishes a mechanism to demand reparations.

The bill requires the U.S. Trade Representative to undertake investigations of major trading partners in order to identify and analyze those foreign acts, policies and practices that deny fully competitive market opportunities to telecommunications products and services exported from U.S. firms. The term "fully competitive" is not defined. However, report language will stress that it means primarily exports from the U.S. and not investment opportunities for U.S. firms.

As the result of such investigations, which must be completed within 6 months, USTR must establish specific primary and secondary negotiating objectives and pursue negotiations with each offending country. If results are not achieved within the following nine months, the President must either retaliate or submit fast-track legislation to extend the negotiating period for an additional year. An additional extension for the third year is allowed if a second fast-track bill is passed.

These procedures straightjacket the USTR into goals and timetables that cannot ever be met realistically. They require the USTR to dictate unilaterally the agreement that must be achieved, and expect foreign governments to submit or face our retaliation. In reality, this bill creates a no-win situation where USTR must either declare false progress in achieving inflexible negotiating objectives or implement retaliation.

If you put yourself in any of our trading partners' places, we believe you will see, as they will, two opportunities. One will be to take advantage of the bill's inflexibility to force a very limited agreement that the U.S. will have to declare a success, and thereby relieve our trading partners of further commitments. The other will be to stonewall and thereby leave us to our own folly, and their retaliation. No country would ever want to enter a negotiating situation in which all its objectives are known to the world, and all must be achieved before it can agree to anything. That is the ultimate no-win situation.

The existing section 301 statute allows the USTR to pursue further market openings in the telecommunications sector without protectionist legislation like H.R. 3131. Indeed such negotiations are underway with Japan and important results have been achieved. We support the new, aggressive Administration position on section 301, and believe that more needs to be done and a tough negotiating posture must be maintained.

However, protectionist threats made by this bill undermine our ability to succeed and will inevitably lead to retrenchment and recalcitrance. Perhaps we need to be reminded that it took more than five years to achieve divestiture of AT&T; the divestiture was not undertaken to benefit our trading partners but to adhere to our traditional free-market principles.

Also, we need to be reminded that, with respect to Europe, the U.S. is a signatory to the GATT Government Procurement Code which recognizes that the EEC's telecommunications sector need not be open to foreign procurement. Further negotiations are required to achieve coverage of that market and a rebalancing of concessions. Further, we need to be reminded that it is the U.S.'s position that benefits that flow from unilateral actions (such as the EEC being joined by Portugal and Spain) does not negate obligations under the GATT to rebalance concessions through compensation.

Finally, it should be noted that this bill also requires that retaliation occur first in the telecommunications sector by limiting market access to imports of telecommunications products and services. Proponents of the bill pat themselves on the back for their willingness to take the "heat" for failed negotiations and to remove the possible burden for other U.S. sectors that rely on imported components.

Congratulations are not in order, in our view, for a willingness to accept more protection, forcing smaller firms to rely on larger ones in the face of diminishing supply, and hurting the consumer by limiting choice and raising prices. Furthermore, since retaliation under the bill is likely to lead to counterretaliation, those seeking protection under this bill leave vulnerable important U.S. export sectors such as agriculture and a host of other exported products.

H.R. 3131 is strongly opposed by the Administration because of its inflexible procedures, unrealistic timetables, and the likelihood of retaliation and counterretaliation. As noted earlier, this Administration like others before it has opposed sectorial reciprocity, preferring efforts to balance trade concessions overall, and, if necessary and appropriate, to take action against our trading partners in those areas which are likely to achieve results in opening up markets.

Convoluted and strict procedures destined to fail and designed primarily to provide cover for protectionist actions, like H.R. 3131, should be rejected. This legislation will hurt efforts to achieve meaningful trade reform legislation that can be signed into law. We respectfully suggest that those of our colleagues who want a law rather than an issue vote against H.R. 3131.

BILL FRENZEL.
WILLIS D. GRADISON.

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